



Substitute House Bill No. 6985

Public Act No. 05-109

***AN ACT ADOPTING REVISED ARTICLE 1 OF THE UNIFORM
COMMERCIAL CODE CONCERNING GENERAL PROVISIONS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 42a-1-101 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) This title [shall be known and] may be cited as the "Uniform Commercial Code".

(b) This article may be cited as "Uniform Commercial Code--General Provisions".

Sec. 2. Section 42a-1-102 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

[(1) This title shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this title are (a) to simplify, clarify and modernize the law governing commercial transactions; (b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties; (c) to make uniform the law among the various jurisdictions.

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(3) The effect of provisions of this title may be varied by agreement, except as otherwise provided in this title and except that the obligations of good faith, diligence, reasonableness and care prescribed by this title may not be disclaimed by agreement, but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of this title of the words "unless otherwise agreed" or words of similar import does not imply the effect of other provisions may not be varied by agreement under subsection (3).

(5) In this title unless the context otherwise requires, (a) words in the singular number include the plural, and in the plural include the singular; (b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.]

This article applies to a transaction to the extent that it is governed by another article of this title.

Sec. 3. Section 42a-1-103 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) This title shall be liberally construed and applied to promote its underlying purposes and policies, which are:

(1) To simplify, clarify and modernize the law governing commercial transactions;

(2) To permit the continued expansion of commercial practices through custom, usage and agreement of the parties; and

(3) To make uniform the law among the various jurisdictions.

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(b) Unless displaced by the particular provisions of this title, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, [or] and other validating or invalidating cause [shall] supplement its provisions.

Sec. 4. Section 42a-1-105 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

[(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this title applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law, including the conflict of laws rules, so specified:

Rights of creditors against sold goods. Section 42a-2-402.

Applicability of the article on leases. Sections 42a-2A-105 and 42a-2A-106.

Applicability of the article on bank deposits and collections.
Section 42a-4-102.

Governing law in the article on funds transfers. Section
42a-4A-507.

Letters of credit. Section 42a-5-116.

Applicability of the article on investment securities. Section
42a-8-110.

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Law governing perfection, the effect of perfection or nonperfection and the priority of security interests and agricultural liens. Sections 42a-9-301 to 42a-9-307, inclusive.]

If any provision or clause of this title or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

Sec. 5. Section 42a-1-106 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

[(1) The remedies provided by this title shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this title or by other rule of law.

(2) Any right or obligation declared by this title is enforceable by action unless the provision declaring it specifies a different and limited effect.]

In this title, unless the statutory context otherwise requires:

(1) Words in the singular number include the plural, and those in the plural include the singular; and

(2) Words of any gender also refer to any other gender.

Sec. 6. (NEW) (*Effective October 1, 2005*) Article 1 of title 42a of the general statutes, as amended by this act, modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 USC 7001 et seq., except that nothing in article 1 of

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title 42a of the general statutes, as amended by this act, modifies, limits or supersedes Section 101(c) of that act, 15 USC 7001(c), or authorizes electronic delivery of any of the notices described in Section 103(b) of that act, 15 USC 7003(b).

Sec. 7. Section 42a-1-201 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of this title that apply to particular articles or parts thereof, have the meanings stated.

(b) Subject to [additional] definitions contained in [the subsequent articles of this title which are applicable to specific articles or parts thereof, and unless the context otherwise requires] other articles of this title that apply to particular articles or parts thereof, in this title:

(1) "Action", in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity and any other [proceedings] proceeding in which rights are determined.

(2) "Aggrieved party" means a party entitled to [resort to] pursue a remedy.

(3) "Agreement", as distinguished from "contract", means the bargain of the parties in fact, as found in their language or [by implication] inferred from other circumstances, including course of [dealing or usage of trade or course of performance as provided in sections 42a-1-205 and 42a-2-208. Whether an agreement has legal consequences is determined by the provisions of this title, if applicable; otherwise by the law of contracts] performance, course of dealing or usage of trade as provided in section 15 of this act.

(4) "Bank" means any person engaged in the business of banking

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and includes a savings bank, savings and loan association, credit union and trust company.

(5) "Bearer" means a person in control of a negotiable electronic document of title or a person in possession of an instrument, a negotiable tangible document of title, or a certificated security payable to bearer or endorsed in blank.

(6) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) ["Burden of establishing of a fact"] "Burden of establishing" a fact means the burden of persuading the [triers] trier of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in [the] ordinary course of business may buy for cash, by exchange of other property or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under article 2 may be a

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buyer in ordinary course of business. [A] "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt. [is not a buyer in ordinary course of business.]

(10) "Conspicuous", with reference to a term, means so written, displayed or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:

(A) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font or color to the surrounding text of the same or lesser size; and

(B) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(11) "Consumer" means an individual who enters into a transaction primarily for personal, family or household purposes.

[(11)] (12) "Contract", as distinguished from "agreement", means the total legal obligation [which] that results from the parties' agreement as [affected] determined by this title [and] as supplemented by any other applicable [rules of law] laws.

[(12)] (13) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

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[(13)] (14) "Defendant" includes a person in the position of defendant in a [cross-action or] counterclaim, cross-claim or third-party claim.

[(14)] (15) "Delivery" with respect to an electronic document of title means voluntary transfer of control and with respect to instruments, tangible documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

[(15)] (16) "Document of title" means a record (A) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold and dispose of the record and the goods the record covers, and (B) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

[(16)] (17) "Fault" means [wrongful act, omission or breach] a default, breach or wrongful act or omission.

[(17)] "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this title to the extent that under a particular agreement or document unlike units are treated as equivalents.]

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(18) "Fungible goods" means:

(A) Goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(B) Goods that by agreement are treated as equivalent.

[(18)] (19) "Genuine" means free of forgery or counterfeiting.

[(19)] (20) "Good faith" means honesty in fact [in the conduct or transaction concerned] and the observance of reasonable commercial standards of fair dealing.

[(20)] (21) "Holder" means:

(A) The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;

(B) The person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) The person in control of a negotiable electronic document of title.

[(21)] To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.]

(22) ["Insolvency proceedings"] "Insolvency proceeding" includes [any] an assignment for the benefit of creditors or other [proceedings] proceeding intended to liquidate or rehabilitate the estate of the person involved.

(23) [A person is "insolvent" who either has ceased to pay his debts

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in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law] "Insolvent" means:

(A) Having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(B) Being unable to pay debts as they become due; or

(C) Being insolvent within the meaning of federal bankruptcy law.

(24) "Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government. [and] The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more [nations] countries.

[(25) Subject to subdivision (27) of this section, a person has "notice" of a fact if the person:

(A) Has actual knowledge of it;

(B) Has received a notice or notification of it; or

(C) From all the facts and circumstances known to the person at the time in question, has reason to know that it exists. A person "knows" or has "knowledge" of a fact when the person has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this title.

(26) A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it. Subject to subdivision (27) of this section,

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a person "receives" a notice or notification when:

(A) It comes to that person's attention; or

(B) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event, from the time when it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.]

[(28)] (25) "Organization" [includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity] means a person other than an individual.

[(29)] (26) "Party", as [distinct] distinguished from "third party", means a person [who] that has engaged in a transaction or made an agreement [within] subject to this title.

[(30)] (27) "Person" [includes an individual or an organization] means an individual, corporation, business trust, estate, trust,

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partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity.

[(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.]

(28) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

[(32)] (29) "Purchase" [includes] means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property.

[(33)] (30) "Purchaser" means a person [who] that takes by purchase.

(31) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

[(34)] (32) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

[(35)] (33) "Representative" [includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other] means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate.

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[(36) "Rights" include remedies.]

(34) "Right" includes remedy.

[(37)] (35) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. [The term also] "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible or a promissory note in a transaction that is subject to article 9. [The] "Security interest" does not include the special property interest of a buyer of goods on identification of such goods to a contract for sale under section 42a-2-401, [is not a "security interest",] but a buyer may also acquire a "security interest" by complying with article 9. Except as otherwise provided in section 42a-2-505, the right of a seller or lessor of goods under article 2 or 2A to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with article 9. The retention or reservation of title by a seller of goods, notwithstanding shipment or delivery to the buyer [pursuant to] under section 42a-2-401, is limited in effect to a reservation of a "security interest". Whether a transaction [creates a lease or a "security interest" is determined by the facts of each case; however, a transaction creates a "security interest" if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and (a) the original term of the lease is equal to or greater than the remaining economic life of the goods, (b) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become owner of the goods, (c) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or (d) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon

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compliance with the lease agreement. A transaction does not create a "security interest" merely because it provides that (A) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into, (B) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording or registration fees, or service or maintenance costs with respect to the goods, (C) the lessee has an option to renew the lease or to become the owner of the goods, (D) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or (E) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed. For the purposes of this subdivision: (i) Additional consideration is not nominal if (I) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (II) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed; (ii) additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised; (iii) "reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and (iv) "present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and

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circumstances of each case at the time the transaction was entered into] in the form of a lease creates a "security interest" is determined pursuant to section 42a-1-203, as amended by this act.

[(38)] (36) "Send" in connection with a writing, record or notice means:

(A) To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or

(B) In any other way to cause to be received any record or notice within the time it would have arrived if properly sent.

[(39)] (37) "Signed" includes using any symbol executed or adopted [by a party] with present intention to [authenticate] adopt or accept a writing.

(38) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

[(40)] (39) "Surety" includes a guarantor or other secondary obligor.

[(41)] "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.]

[(42)] (40) "Term" means [that] a portion of an agreement [which] that relates to a particular matter.

[(43)] (41) "Unauthorized signature" means [one] a signature made without actual, implied, or apparent authority. [and] The term includes a forgery.

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[(44) "Value". Except as otherwise provided by sections 42a-3-303, 42a-4-210 and 42a-4-211 with respect to negotiable instruments and bank collections a person gives "value" for rights if he acquires them (a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or (b) as security for or in total or partial satisfaction of a preexisting claim; or (c) by accepting delivery pursuant to a preexisting contract for purchase; or (d) generally, in return for any consideration sufficient to support a simple contract.]

[(45)] (42) "Warehouse receipt" means a document of title issued by a person engaged in the business of storing goods for hire.

[(46)] (43) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

Sec. 8. Section 42a-1-202 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

[A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.]

(a) Subject to subsection (f) of this section, a person has "notice" of a fact if the person:

(1) Has actual knowledge of it;

(2) Has received a notice or notification of it; or

(3) From all the facts and circumstances known to the person at the

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time in question, has reason to know that it exists.

(b) "Knowledge" or "knows" means actual knowledge.

(c) "Discover", "learn" or words of similar import refer to knowledge rather than to reason to know.

(d) A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) Subject to subsection (f) of this section, a person "receives" a notice or notification when:

(1) It comes to that person's attention; or

(2) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(f) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

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Sec. 9. Section 42a-1-203 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

[Every contract or duty within this title imposes an obligation of good faith in its performance or enforcement.]

(a) Whether a transaction in the form of a lease creates a lease or a security interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

(1) The original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(3) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(4) The lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) A transaction in the form of a lease does not create a security interest merely because:

(1) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the

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goods at the time the lease is entered into;

(2) The lessee assumes risk of loss of the goods;

(3) The lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording or registration fees, or service or maintenance costs;

(4) The lessee has an option to renew the lease or to become the owner of the goods;

(5) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(6) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

(1) When the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(2) When the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(e) The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value or cost of performing

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under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

Sec. 10. Section 42a-1-204 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

[(1) Whenever this title requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.]

Except as otherwise provided in articles 3, 4 and 5, a person gives value for rights if the person acquires them:

(1) In return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

(2) As security for, or in total or partial satisfaction of, a preexisting claim;

(3) By accepting delivery under a preexisting contract for purchase;
or

(4) In return for any consideration sufficient to support a simple contract.

Sec. 11. Section 42a-1-205 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

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[(1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(2) A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(3) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

(5) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.]

(a) Whether a time for taking an action required by this title is reasonable depends on the nature, purpose and circumstances of the action.

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(b) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

Sec. 12. Section 42a-1-206 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

[(1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods nor of securities nor to security agreements.]

Whenever this title creates a "presumption" with respect to a fact, or provides that a fact is "presumed", the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

Sec. 13. (NEW) (*Effective October 1, 2005*) (a) Except as provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement, title 42a of the general statutes applies to transactions bearing an appropriate relation to this state.

(b) Where one of the following provisions of title 42a of the general statutes specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law, including the conflict of laws rules, so specified:

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Rights of creditors against sold goods. Section 42a-2-402 of the general statutes, as amended by this act.

Applicability of the article on leases. Sections 42a-2A-105 and 42a-2A-106 of the general statutes.

Applicability of the article on bank deposits and collections. section 42a-4-102 of the general statutes.

Governing law in the article on funds transfers. Section 42a-4A-507 of the general statutes.

Letters of credit. Section 42a-5-116 of the general statutes.

Applicability of the article on investment securities. Section 42a-8-110 of the general statutes.

Law governing perfection, the effect of perfection or nonperfection and the priority of security interests and agricultural liens. Sections 42a-9-301 to 42a-9-307, inclusive, of the general statutes.

Sec. 14. (NEW) (*Effective October 1, 2005*) (a) Except as otherwise provided in subsection (b) of this section or elsewhere in title 42a of the general statutes, the effect of provisions of title 42a of the general statutes may be varied by agreement.

(b) The obligations of good faith, diligence, reasonableness and care prescribed by title 42a of the general statutes may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable. Whenever title 42a of the general statutes requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) The presence in certain provisions of title 42a of the general statutes of the phrase "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be

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varied by agreement under this section.

Sec. 15. (NEW) (*Effective October 1, 2005*) (a) A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:

(1) The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A "course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) Except as otherwise provided in subsection (f) of this section, the

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express terms of an agreement and any applicable course of performance, course of dealing or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(1) Express terms prevail over course of performance, course of dealing and usage of trade;

(2) Course of performance prevails over course of dealing and usage of trade; and

(3) Course of dealing prevails over usage of trade.

(f) Subject to section 42a-2-209 of the general statutes, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

Sec. 16. (NEW) (*Effective October 1, 2005*) Every contract or duty within title 42a of the general statutes imposes an obligation of good faith in its performance and enforcement.

Sec. 17. (NEW) (*Effective October 1, 2005*) (a) The remedies provided by title 42a of the general statutes must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed, but neither consequential or special damages nor penal damages may be had except as specifically provided in title 42a of the general statutes or by other rule of law.

(b) Any right or obligation declared by title 42a of the general statutes is enforceable by action unless the provision declaring it specifies a different and limited effect.

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Sec. 18. (NEW) (*Effective October 1, 2005*) A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

Sec. 19. (NEW) (*Effective October 1, 2005*) A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

Sec. 20. (NEW) (*Effective October 1, 2005*) (a) A party that, with explicit reservation of rights, performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient.

(b) Subsection (a) of this section does not apply to an accord and satisfaction.

Sec. 21. (NEW) (*Effective October 1, 2005*) A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure", or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

Sec. 22. (NEW) (*Effective October 1, 2005*) An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person

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obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

Sec. 23. Subsection (1) of section 42a-2-103 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(1) In this article unless the context otherwise requires: (a) "Buyer" means a person who buys or contracts to buy goods. [(b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade. (c)] (b) "Receipt" of goods means taking physical possession of them. [(d)] (c) "Seller" means a person who sells or contracts to sell goods.

Sec. 24. Section 42a-2-202 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented (a) by course of performance, course of dealing or usage of trade as provided by section [42a-1-205 or by course of performance as provided by section 42a-2-208] 15 of this act; and (b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

Sec. 25. Subsection (3) of section 42a-2-402 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(3) When a seller remains in possession of goods which have been

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sold or identified to a contract for sale or of goods which, after sale, have been leased back to him, the buyer or lessor of such goods may protect his interest by complying with the filing provisions of article 9. On compliance the buyer or lessor has, against creditors of and purchasers from the seller, the rights of a secured party with a perfected security interest. Such filing does not, of itself, make the interest of the buyer or lessor a security interest, as defined by [subsection (37)] subdivision (35) of subsection (b) of section 42a-1-201, as amended by this act.

Sec. 26. Section 42a-2A-102 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) In this article:

(1) "Authenticate" means:

(A) To sign; or

(B) To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(2) "Cancellation" means an act by either party which ends a lease contract because of a default by the other party.

(3) "Commercial unit" means a unit of goods which by commercial usage is a single whole for purposes of lease and whose division materially impairs its character or value in the relevant market or in use. A commercial unit may be a single article, such as a machine; a set of articles, such as a suite of furniture or a line of machinery; a quantity, such as a gross or carload; or any other unit treated in use or in the relevant market as a single whole.

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(4) "Computer" means an electronic device that can perform substantial computations, including numerous arithmetic operations or logic operations, without human intervention during the computation or operation.

(5) "Conforming" goods or conduct under a lease contract means goods or performance that are in accordance with the obligations under the contract.

(6) "Conspicuous", with reference to a term, means so written, displayed or otherwise presented that a reasonable person against which it is to operate ought to have noticed it. A term in an electronic record intended to evoke a response by an electronic agent is conspicuous if it is presented in a form that would enable a reasonably configured electronic agent to take it into account or react without review of the record by an individual. Conspicuous terms include the following:

(A) With respect to a person:

(i) A heading in capitals in a size equal to or greater than, or in contrasting type, font or color to, the surrounding text;

(ii) Language in the body of a record or display in larger or other contrasting type, font or color or set off from the surrounding text by symbols or other marks that call attention to the language; and

(iii) A term prominently referenced in an electronic record or display which is readily accessible and reviewable from the record or display; and

(B) With respect to a person or an electronic agent, a term or reference to a term that is so placed in a record or display that the person or electronic agent can not proceed without taking some action with respect to the term or reference.

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(7) "Consumer" means an individual who leases or contracts to lease goods that, at the time of contracting, are intended by the individual to be used primarily for personal, family or household purposes. Personal, family or household use does not include professional or commercial purposes, including agriculture, business management and investment management, other than management of the individual's personal or family investments.

(8) "Consumer lease" means a lease between a merchant lessor and a consumer.

(9) "Delivery" means the voluntary transfer of physical possession or control of goods.

(10) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical or electromagnetic capabilities or similar capabilities.

(11) "Electronic agent" means a computer program or electronic or other automated means used to initiate an action or to respond to electronic messages or performances without intervention by an individual at the time of the action or response.

(12) "Electronic message" means an electronic record or display stored, generated or transmitted by electronic means for purposes of communication to another person or electronic agent.

(13) "Electronic event" means an electronic authentication, message, record or performance.

(14) "Finance lease" means a lease with respect to which:

(A) The lessor does not select, manufacture or supply the goods;

(B) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease or, in the case of goods that

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have been leased previously by the lessor and are not being leased to a consumer, in connection with another lease; and

(C) One of the following occurs:

(i) The lessee receives a copy of the agreement by which the lessor acquired, or proposes to acquire, the goods or the right to possession and use of the goods before authenticating the lease agreement;

(ii) The lessee's approval of the agreement or of the general contractual terms under which the lessor acquired or proposes to acquire the goods or the right to possession and use of the goods is a condition to the effectiveness of the lease contract;

(iii) The lessee, before authenticating the lease agreement, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(iv) If the lease is not a consumer lease, before the lessee authenticates the lease agreement, the lessor informs the lessee in writing:

(I) Of the identity of the person supplying the goods to the lessor, unless the lessee has selected such person and directed the lessor to acquire the goods or the right to possession and use of the goods from such person;

(II) That the lessee is entitled under this article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the

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contract by which the lessor acquired the goods or the right to possession and use of the goods; and

(III) That the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of such promises and warranties, including any disclaimers and limitations of such promises and warranties, or a statement of remedies.

[(15)] (15) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.]

[(16)] (15) "Goods" means all things that are movable at the time of identification to a lease contract or that are fixtures. The term includes the unborn young of animals. The term does not include money in which the rent is to be paid, the subject of foreign exchange transactions, documents, letters of credit, instruments, investment property, accounts, chattel paper or general intangibles, payment intangibles or minerals, or the like, including oil and gas, before extraction.

[(17)] (16) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying or processing information.

[(18)] (17) "Lease" means the transfer of the right to possession and use of goods for a period in return for consideration. The term includes a sublease unless the context clearly indicates otherwise. The term does not include a sale, including a sale on approval or a sale or return, or retention or creation of a security interest.

[(19)] (18) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in this article. The

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term includes a sublease agreement unless the context clearly indicates otherwise.

[(20)] (19) "Lease contract" means the total legal obligation resulting from the lease agreement as affected by this article and other applicable law. The term includes a sublease contract unless the context clearly indicates otherwise.

[(21)] (20) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

[(22)] (21) "Lessee" means a person that acquires the right to possession and use of goods under a lease. The term includes a sublessee unless the context clearly indicates otherwise.

[(23)] (22) "Lessee in ordinary course of business" means a person that, in good faith and without knowledge that the person's lease is in violation of ownership rights, a security interest or a leasehold interest of a third party in the goods, leases in the ordinary course from a person in the business of selling or leasing goods of that kind for cash or by exchange of other property or on secured or unsecured credit, including acquiring goods or documents of title under a preexisting lease contract, but not including a transfer in bulk, or as security for or in total or partial satisfaction of a money debt. The term does not include a pawnbroker.

[(24)] (23) "Lessor" means a person that transfers the right to possession and use of goods under a lease. The term includes a sublessor unless the context clearly indicates otherwise.

[(25)] (24) "Lessor's residual interest" means the lessor's interest in goods after expiration, termination or cancellation of a lease contract.

[(26)] (25) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation. The term

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does not include a security interest.

[(27)] (26) "Lot" means a parcel or single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

[(28)] (27) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

[(29)] (28) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. In determining present value, the discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into. Otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

[(30)] (29) "Receive" means:

(A) With respect to goods, to take delivery; or

(B) With respect to a notice:

(i) To come to a person's attention; or

(ii) To be delivered to and available at a location designated by agreement for the purpose of notice, or, in the absence of an agreed location:

(I) To be delivered at the person's residence, or the person's place of business through which the contract was made, or at any other place held out by the person as a place for the receipt of such notices; or

(II) In the case of an electronic record, to come into existence in an information processing system in a form capable of being processed by

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or perceived from a system of that type, if the recipient uses, has designated or holds out that system as a place for the receipt of the notices.

[(31)] (31) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.]

[(32)] (30) "Send" means, with any costs provided for and properly addressed or directed as reasonable under the circumstances or as otherwise agreed, to (A) deposit in the mail or with a commercially reasonable carrier, (B) deliver for transmission to or creation in another location or system, or (C) take the steps necessary to initiate transmission to or creation in another location or system. In addition, with respect to an electronic message, the term means to initiate operations that in the ordinary course will cause the record to come into existence in an information processing system in a form capable of being processed by or perceived from a system of that type by the recipient, if the recipient uses, has designated or holds out that system or address as a place for the receipt of communications of the kind. Receipt within the time in which it would have arrived if properly sent has the effect of a proper sending.

[(33)] (31) "Sublease" means a lease of goods whose right to possession and use is acquired by the lessor as a lessee under an existing lease.

[(34)] (32) "Supplier" means a person from which a lessor buys or leases goods to be leased under a finance lease.

[(35)] (33) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

[(36)] (34) "Termination" means the ending of a contract or a part thereof by an act by a party under a power created by agreement or

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law, or by operation of the terms of the agreement for a reason other than for a default by the other party.

(b) The following definitions in other articles apply to this article:

"Account". Section 42a-9-102(a)(2).
"Between merchants". Section 42a-2-104(3).
"Buyer". Section 42a-2-103(1)(a), as amended by this act.
"Chattel paper". Section 42a-9-102(a)(11).
"Consumer goods". Section 42a-9-102(a)(23).
"Document". Section 42a-9-102(a)(30).
"Entrusting". Section 42a-2-403(3).
"General intangible". Section 42a-9-102(a)(42).
"Instrument". Section 42a-9-102(a)(47).
"Merchant". Section 42a-2-104(1).
"Mortgage". Section 42a-9-102(a)(55).
"Pursuant to commitment". Section 42a-9-102(a)(68).
"Sale". Section 42a-2-106(1).
"Sale on approval". Section 42a-2-326(1)(a).
"Sale or return". Section 42a-2-326(1)(b).
"Seller". Section [42a-2-103(1)(d)] 42a-2-103(1)(c), as amended by this act.

(c) In addition, article 1 contains general definitions and principles of construction that apply throughout this article.

Sec. 27. Subsection (a) of section 42a-2A-704 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) In accordance with section [42a-1-106] 17 of this act, the remedies provided in this article must be liberally administered with the purpose of placing the aggrieved party in as good a position as if the other party had fully performed.

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Sec. 28. Subsection (a) of section 42a-2A-721 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) Except as otherwise provided with respect to damages liquidated in the lease agreement under section 42a-2A-710 or otherwise determined by agreement of the parties under [subdivision (3) of section 42a-1-102] section 14 of this act and section 42a-2A-711, if a lessor elects to retain the goods or elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under subsection (b) of section 42a-2A-720 or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in subsection (a) or subdivision (1) of subsection (c) of section 42a-2A-716 or, if agreed, for other default of the lessee:

(1) Accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor;

(2) The present value, as of the date determined under subdivision (1) of this subsection, of the total rent for the then remaining period of the original lease agreement, minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term; and

(3) Any incidental or consequential damages allowed under section 42a-2A-706 or 42a-2A-707, less expenses saved in consequence of the lessee's default.

Sec. 29. Subsection (a) of section 42a-3-103 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective*

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October 1, 2005):

(a) In this article:

(1) "Acceptor" means a drawee who has accepted a draft.

(2) "Drawee" means a person ordered in a draft to make payment.

(3) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

[(4)] (4) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.]

[(5)] (4) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

[(6)] (5) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

[(7)] (6) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this article or article 4.

[(8)] (7) "Party" means a party to an instrument.

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[(9)] (8) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

[(10)] (9) "Prove" with respect to a fact means to meet the burden of establishing the fact. [, as defined in section 42a-1-201(8).]

[(11)] (10) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

Sec. 30. Subsection (c) of section 42a-4-104 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(c) "Control" as provided in section [42a-106] 42a-7-106 and the following definitions in other articles apply to this article:

"Acceptance". Section 42a-3-409.

"Alteration". Section 42a-3-407.

"Cashier's check". Section 42a-3-104.

"Certificate of deposit". Section 42a-3-104.

"Certified check". Section 42a-3-409.

"Check". Section 42a-3-104.

["Good faith". Section 42a-3-103.]

"Holder in due course". Section 42a-3-302.

"Instrument". Section 42a-3-104.

"Notice of dishonor". Section 42a-3-503.

"Order". Section 42a-3-103, as amended by this act.

"Ordinary care". Section 42a-3-103, as amended by this act.

"Person entitled to enforce". Section 42a-3-301.

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"Presentment". Section 42a-3-501.

"Promise". Section 42a-3-103, as amended by this act.

"Prove". Section 42a-3-103, as amended by this act.

"Teller's check". Section 42a-3-104.

"Unauthorized signature". Section 42a-3-403.

Sec. 31. Subsection (a) of section 42a-4A-105 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) In this article:

(1) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(2) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this article.

(3) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(4) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(5) "Funds-transfer system" means a wire-transfer network,

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automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

[(6) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.]

[(7)] (6) "Prove" with respect to a fact means to meet the burden of establishing the fact. [(Section 42a-1-201(8)).]

Sec. 32. Subsection (a) of section 42a-4A-106 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) The time of receipt of a payment order or communication cancelling or amending a payment order is determined by the rules applicable to receipt of a notice stated in [subsection (27) of section 42a-1-201] section 42a-1-202, as amended by this act. A receiving bank may fix a cutoff time or times on a funds-transfer business day for the receipt and processing of payment orders and communications cancelling or amending payment orders. Different cutoff times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cutoff time may apply to senders generally or different cutoff times may apply to different senders or categories of payment orders. If a payment order or communication cancelling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cutoff time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

Sec. 33. Subsection (b) of section 42a-4A-204 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective*

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October 1, 2005):

(b) Reasonable time under subsection (a) of this section may be fixed by agreement as stated in subsection [(1) of section 42a-1-204] (b) of section 14 of this act, but the obligation of a receiving bank to refund payment as stated in subsection (a) of this section may not otherwise be varied by agreement.

Sec. 34. Subsection (a) of section 42a-5-102 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) In this article:

(1) "Adviser" means a person who, at the request of the issuer, a confirmer or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed or amended.

(2) "Applicant" means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.

(3) "Beneficiary" means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit.

(4) "Confirmer" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another.

(5) "Dishonor" of a letter of credit means failure timely to honor or

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to take an interim action, such as acceptance of a draft, that may be required by the letter of credit.

(6) "Document" means a draft or other demand, document of title, investment security, certificate, invoice or other record, statement or representation of fact, law, right or opinion [(i)] (A) which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in subsection (e) of section 42a-5-108, and [(ii)] (B) which is capable of being examined for compliance with the terms and conditions of the letter of credit. A document may not be oral.

[(7)] "Good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.]

[(8)] (7) "Honor" of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, "honor" occurs [(i)] (A) upon payment, [(ii)] (B) if the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment, or [(iii)] (C) if the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.

[(9)] (8) "Issuer" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family or household purposes.

[(10)] (9) "Letter of credit" means a definite undertaking that satisfies the requirements of section 42a-5-104 by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.

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[(11)] (10) "Nominated person" means a person whom the issuer [(i)] (A) designates or authorizes to pay, accept, negotiate or otherwise give value under a letter of credit, and [(ii)] (B) undertakes by agreement or custom and practice to reimburse.

[(12)] (11) "Presentation" means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.

[(13)] (12) "Presenter" means a person making a presentation as or on behalf of a beneficiary or nominated person.

[(14)] "Record" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium and is retrievable in perceivable form.]

[(15)] (13) "Successor of a beneficiary" means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator and receiver.

Sec. 35. Subsection (c) of section 42a-5-103 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(c) With the exception of this subsection, subsections (a) and (d) of this section, subdivisions (8) and (9) [and (10)] of subsection (a) of section 42a-5-102, as amended by this act, subsection (d) of section 42a-5-106 and subsection (d) of section 42a-5-114, and except to the extent prohibited in [subsection (3) of section 42a-1-102] section 14 of this act and subsection (d) of section 42a-5-117, the effect of this article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking

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generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this article.

Sec. 36. Subsection (g) of section 42a-5-108 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(g) If an undertaking constituting a letter of credit under subdivision [(10)] (9) of subsection (a) of section 42a-5-102, as amended by this act, contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

Sec. 37. Subsection (a) of section 42a-8-102 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) In this article:

(1) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer or deal with the financial asset.

(2) "Bearer form", as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an endorsement.

(3) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(4) "Certificated security" means a security that is represented by a certificate.

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(5) "Clearing corporation" means:

[(i)] (A) A person that is registered as a "clearing agency" under the federal securities laws;

[(ii)] (B) A federal reserve bank; or

[(iii)] (C) Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

(6) "Communicate" means to:

[(i)] (A) Send a signed writing; or

[(ii)] (B) Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(7) "Endorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring or redeeming the security or granting a power to assign, transfer or redeem it.

(8) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of [section 42a-8-501(b)(2) or (3)] subdivision (2) or (3) of subsection (b) of section 42a-8-501, that person is the entitlement holder.

(9) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial

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asset to which the entitlement holder has a security entitlement.

(10) "Financial asset", except as otherwise provided in section 42a-8-103, means: [(i)] (A) A security; [(ii)] (B) an obligation of a person or a share, participation or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or [(iii)] (C) any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this article. As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

[(11)] "Good faith", for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this article, means honesty in fact and the observance of reasonable commercial standards of fair dealing.]

[(12)] (11) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

[(13)] (12) "Registered form", as applied to a certificated security, means a form in which:

[(i)] (A) The security certificate specifies a person entitled to the security; and

[(ii)] (B) A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

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[(14)] (13) "Securities intermediary" means:

[(i)] (A) A clearing corporation; or

[(ii)] (B) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

[(15)] (14) "Security", except as otherwise provided in section 42a-8-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

[(i)] (A) Which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

[(ii)] (B) Which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests or obligations; and

[(iii)] (C) Which:

[(A)] (i) Is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

[(B)] (ii) Is a medium for investment and by its terms expressly provides that it is a security governed by this article.

[(16)] (15) "Security certificate" means a certificate representing a security.

[(17)] (16) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in part 5.

[(18)] (17) "Uncertificated security" means a security that is not

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represented by a certificate.

Sec. 38. Section 42a-8-111 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and its participants in the clearing corporation is effective even if the rule conflicts with this article, section 13 of this act and sections [42a-1-105,] 42a-4-104(a), 42a-9-103a, 42a-9-105, 42a-9-106, 42a-9-115, 42a-9-116, 42a-9-203(1), 42a-9-301(1), 42a-9-302(1), 42a-9-304, 42a-9-305, 42a-9-306, 42a-9-309 and 42a-9-312 and affects another party who does not consent to the rule.

Sec. 39. Subdivision (43) of subsection (a) of section 42a-9-102 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(43) "Good faith" [means honesty in fact and the observance of reasonable commercial standards of fair dealing] has the same meaning as provided in subdivision (20) of subsection (b) of section 42a-1-201, as amended by this act.

Sec. 40. Section 1-1a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

Unless the context of any statute requires a different interpretation, all words and terms appearing in any statute and relating to security in personal property shall be construed to mean their counterparts in [subsection (37)] subdivision (35) of subsection (b) of section 42a-1-201, as amended by this act, and chapter 748. In particular "chattel mortgage", "conditional sale contract" or "lien" on personal property, except a lien of the type to which chapter 748 does not apply under subdivision (2) of subsection (d) of section 42a-9-109, shall be construed to mean "security interest"; "mortgagor" and "conditional vendee" shall be construed to mean "debtor"; "mortgagee" and

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"conditional vendor" shall be construed to mean "secured party".

Sec. 41. Subsection (b) of section 1-268 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(b) Sections 1-266 to 1-286, inclusive, do not apply to a transaction to the extent it is governed by:

(1) A law governing the creation and execution of wills, codicils or testamentary trusts;

(2) Except to the extent provided in section 1-281, as amended by this act, the Uniform Commercial Code, other than [sections 42a-1-107 and 42a-1-206,] section 18 of this act and articles 2 and 2A of title 42a; or

(3) Sections 47-10, 47-12, 47-12a, 47-14g, 47-14j, 47-14k, 47-15, 47-16, 47-17, 47-18a and 47-19.

Sec. 42. Subsection (d) of section 1-281 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in subdivision [(20)] (21) of subsection (b) of section 42a-1-201, as amended by this act, or other similar law, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, or other similar law, including, if the applicable statutory requirements under subsection (a) of section 42a-3-302 or section 42a-7-501 or 42a-9-308, or other similar law, are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated or a purchaser, respectively. Delivery, possession and endorsement are not

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required to obtain or exercise any of the rights under this subsection.

Sec. 43. Subparagraph (C) of subdivision (70) of section 12-81 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(C) The state and the municipality and district shall hold a security interest, as defined in subdivision [(37)] (35) of subsection (b) of section 42a-1-201, as amended by this act, in any machinery or equipment which is exempt from taxation pursuant to this subdivision, in an amount equal to the tax revenue reimbursed or lost, as the case may be, which shall be subordinate to any purchase money security interest, as defined in section 42a-9-103a. Such security interest shall be enforceable against the taxpayer for a period of five years after the last assessment year in which such exemption was received in any case in which the business organization ceases all business operations or moves its business operations entirely out of this state. Any assessor who has granted an exemption under this subdivision shall provide written notification to the secretary of the cessation of such operations or the move of such operations entirely out of this state. Such notification may be made at any time after the October first of the last assessment year in which such exemption is granted and before the September thirtieth that is five years after the conclusion of said assessment year. Upon receiving such notification and complying with the provisions of section 12-35a, the state shall have a lien upon the machinery or equipment situated in this state and owned by the person that ceased all business operations or moved such operations entirely out of this state. Notwithstanding the provisions of section 12-35a, the total amount of the reimbursement made by the state for the property tax exemptions granted to the person under the provisions of this subdivision, shall be deemed to be the amount of the tax which such person failed to pay. Notwithstanding said section 12-35a, the information required to be included in the notice of lien for said tax

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shall be as follows: (i) The owner of the property upon which the lien is claimed, (ii) the business address or residence address of such owner, (iii) the specific property claimed to be subject to such lien, (iv) the location of such property at the time it was last made tax-exempt pursuant to this subdivision, (v) the total amount of the reimbursement made by the state for the property tax exemptions granted to such owner under the provisions of this subdivision, and (vi) the tax period or periods for which such lien is claimed. If more than one agency of the state perfects such a notice of lien on the same day, the priority of such liens shall be determined by the time of day such liens were perfected, and if perfected at the same time, the lien for the highest amount shall have priority. In addition to the other remedies provided in this subdivision, the Attorney General, upon request of the secretary, may bring a civil action in a court of competent jurisdiction to recover the amount of tax revenue reimbursed by the state from any person who received an exemption under this subdivision.

Sec. 44. Subparagraph (C) of subdivision (72) of section 12-81 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(C) Any person claiming the exemption provided under this subdivision for machinery or equipment shall not be eligible to claim the exemption provided under subdivision (60) of this section or subdivision (70) of this section, as amended by this act, for the same machinery or equipment. The state and the municipality and district shall hold a security interest, as defined in subdivision [(37)] (35) of subsection (b) of section 42a-1-201, as amended by this act, in any machinery or equipment which is exempt from taxation pursuant to this subdivision, in an amount equal to the tax revenue reimbursed or lost, as the case may be, which shall be subordinate to any purchase money security interest, as defined in section 42a-9-103a. Such security

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interest shall be enforceable against the claimant for a period of five years after the last assessment year in which such exemption was received in any case in which such person ceases all manufacturing or biotechnology operations or moves such manufacturing or biotechnology operations entirely out of this state. Any assessor who has granted an exemption under this subdivision shall provide written notification to the secretary of the cessation of such operations or the move of such operations entirely out of this state. Such notification may be made at any time after the October first of the last assessment year in which such exemption is granted and before the September thirtieth that is five years after the conclusion of said assessment year. Upon receiving such notification and complying with the provisions of section 12-35a, the state shall have a lien upon the machinery or equipment situated in this state and owned by the person that ceased all business operations or moved such operations entirely out of this state. Notwithstanding the provisions of section 12-35a, the total amount of the reimbursement made by the state for the property tax exemptions granted to the person under the provisions of this subdivision, shall be deemed to be the amount of the tax which such person failed to pay. Notwithstanding said section 12-35a, the information required to be included in the notice of lien for such tax shall be as follows: (i) The owner of the property upon which the lien is claimed, (ii) the business address or residence address of such owner, (iii) the specific property claimed to be subject to such lien, (iv) the location of such property at the time it was last made tax-exempt pursuant to this subdivision, (v) the total amount of the reimbursement made by the state for the property tax exemptions granted to such owner under the provisions of this subdivision, and (vi) the tax period or periods for which such lien is claimed. If more than one agency of the state perfects such a notice of lien on the same day, the priority of such liens shall be determined by the time of day such liens were perfected, and if perfected at the same time, the lien for the highest amount shall have priority. In addition to the other

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remedies provided in this subdivision, the Attorney General, upon request of the secretary, may bring a civil action in a court of competent jurisdiction to recover the amount of tax revenue reimbursed by the state from any person who received an exemption under this subdivision. The following shall not be eligible for the exemption provided under this subdivision: (I) A public service company, as defined in section 16-1; and (II) any provider, directly or indirectly, of electricity, oil, water or gas.

Sec. 45. Subdivision (12) of subsection (a) of section 12-407 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(12) "Retailer" includes: (A) Every person engaged in the business of making sales at retail or in the business of making retail sales at auction of tangible personal property owned by the person or others; (B) every person engaged in the business of making sales for storage, use or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use or other consumption; (C) every operator, as defined in subdivision (18) of this subsection; (D) every seller rendering any service described in subdivision (2) of this subsection; (E) every person under whom any salesman, representative, peddler or canvasser operates in this state, or from whom such salesman, representative, peddler or canvasser obtains the tangible personal property that is sold; (F) every person with whose assistance any seller is enabled to solicit orders within this state; (G) every person making retail sales from outside this state to a destination within this state and not maintaining a place of business in this state who engages in regular or systematic solicitation of sales of tangible personal property in this state (i) by the display of advertisements on billboards or other outdoor advertising in this state, (ii) by the distribution of catalogs, periodicals, advertising flyers or other advertising by means of print,

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radio or television media, or (iii) by mail, telegraphy, telephone, computer data base, cable, optic, microwave or other communication system, for the purpose of effecting retail sales of tangible personal property, provided such person has made one hundred or more retail sales from outside this state to destinations within this state during the twelve-month period ended on the September thirtieth immediately preceding the monthly or quarterly period with respect to which such person's liability for tax under this chapter is determined; (H) any person owned or controlled, either directly or indirectly, by a retailer engaged in business in this state which is the same as or similar to the line of business in which such person so owned or controlled is engaged; (I) any person owned or controlled, either directly or indirectly, by the same interests that own or control, either directly or indirectly, a retailer engaged in business in this state which is the same as or similar to the line of business in which such person so owned or controlled is engaged; (J) any assignee of a person engaged in the business of leasing tangible personal property to others, where leased property of such person which is subject to taxation under this chapter is situated within this state and such assignee has a security interest, as defined in [subsection (37)] subdivision (35) of subsection (b) of section 42a-1-201, as amended by this act, in such property; and (K) every person making retail sales of items of tangible personal property from outside this state to a destination within this state and not maintaining a place of business in this state who repairs or services such items, under a warranty, in this state, either directly or indirectly through an agent, independent contractor or subsidiary.

Sec. 46. Subparagraph (A) of subdivision (15) of subsection (a) of section 12-407 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(15) (A) "Engaged in business in the state" means and includes but shall not be limited to the following acts or methods of transacting

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business: (i) Selling in this state, or any activity in this state in connection with selling in this state, tangible personal property for use, storage or consumption within the state; (ii) engaging in the transfer for a consideration of the occupancy of any room or rooms in a hotel or lodging house for a period of thirty consecutive calendar days or less; (iii) rendering in this state any service described in any of the subparagraphs of subdivision (2) of this subsection; (iv) maintaining, occupying or using, permanently or temporarily, directly or indirectly, through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample room or place, warehouse or storage point or other place of business or having any representative, agent, salesman, canvasser or solicitor operating in this state for the purpose of selling, delivering or taking orders; (v) notwithstanding the fact that retail sales are made from outside this state to a destination within this state and that a place of business is not maintained in this state, engaging in regular or systematic solicitation of sales of tangible personal property in this state by the display of advertisements on billboards or other outdoor advertising in this state, by the distribution of catalogs, periodicals, advertising flyers or other advertising by means of print, radio or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave or other communication system, for the purpose of effecting retail sales of tangible personal property, provided one hundred or more retail sales from outside this state to destinations within this state are made during the twelve-month period ended on the September thirtieth immediately preceding the monthly or quarterly period with respect to which liability for tax under this chapter is determined; (vi) being owned or controlled, either directly or indirectly, by a retailer engaged in business in this state which is the same as or similar to the line of business in which the retailer so owned or controlled is engaged; (vii) being owned or controlled, either directly or indirectly, by the same interests that own or control, either directly or indirectly, a retailer engaged in business in this state which is the same as or similar to the

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line of business in which the retailer so owned or controlled is engaged; (viii) being the assignee of a person engaged in the business of leasing tangible personal property to others, where leased property of such person is situated within this state and such assignee has a security interest, as defined in [subsection (37)] subdivision (35) of subsection (b) of section 42a-1-201, as amended by this act, in such property; and (ix) notwithstanding the fact that retail sales of items of tangible personal property are made from outside this state to a destination within this state and that a place of business is not maintained in this state, repairing or servicing such items, under a warranty, in this state, either directly or indirectly through an agent, independent contractor or subsidiary.

Sec. 47. Subdivision (8) of section 14-165 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(8) "Security interest" means a "security interest" as defined in subdivision [(37)] (35) of subsection (b) of section 42a-1-201, as amended by this act.

Sec. 48. Section 14-167 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

This chapter does not apply to or affect: (1) A lien given by statute or rule of law to a supplier of services or materials for the vehicle; (2) a lien given by statute to the United States, this state or any political subdivision of this state; (3) a security interest in a vehicle created by a manufacturer or dealer who holds the vehicle for sale, but a buyer in [the] ordinary course of business, as defined in subdivision (9) of subsection (b) of section 42a-1-201, as amended by this act, takes free of the security interest, as stated in section 42a-9-320; or (4) a security interest in a vehicle that is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of

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selling vehicles, as provided in subsection (d) of section 42a-9-311.

Sec. 49. Subsection (c) of section 36a-770 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(c) Definitions. As used in sections 36a-770 to 36a-788, inclusive, 42-100b and 42-100c, unless the context otherwise requires:

(1) "Boat" means any watercraft, as defined in section 22a-248, other than a seaplane, used or capable of being used as a means of transportation on water, by any power including muscular.

(2) "Cash price" means the total amount in dollars at which the seller and buyer agreed the seller would transfer unqualified title to the goods, if the transaction were a cash sale instead of a sale under a retail installment contract.

(3) "Commercial vehicle" means any domestic or foreign truck or truck tractor of ten thousand or more pounds gross vehicular weight or any trailer or semitrailer designed for use in connection with any truck or truck tractor of ten thousand or more pounds gross vehicular weight and which is not used primarily for personal, family or household use.

(4) "Filing fee" means the fee prescribed by law for filing, recording or otherwise perfecting and releasing or satisfying a security interest, as defined in subdivision [(37)] (35) of subsection (b) of section 42a-1-201, as amended by this act, retained or created by a retail installment contract or installment loan contract.

(5) "Finance charge" means the amount in excess of the cash price of the goods agreed upon by the retail seller and the retail buyer, to be paid by the retail buyer for the privilege of purchasing the goods under the retail installment contract or installment loan contract.

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(6) "Goods" means (A) "consumer goods", as defined in subdivision (23) of subsection (a) of section 42a-9-102 and motor vehicles included under such definition, having an aggregate cash price of fifty thousand dollars or less, and (B) "equipment", as defined in subdivision (33) of subsection (a) of section 42a-9-102, having an aggregate cash price of sixteen thousand dollars or less, provided such consumer goods or such equipment is included in one retail installment contract or installment loan contract.

(7) "Installment loan contract" means any agreement made in this state to repay in installments the amount loaned or advanced to a retail buyer for the purpose of paying the retail purchase price of goods and by virtue of which a security interest, as defined in subdivision [(37)] (35) of subsection (b) of section 42a-1-201, as amended by this act, is taken in the goods for the payment of the amount loaned or advanced. For purposes of this subdivision, "installment loan contract" does not include agreements to repay in installments loans made by the United States or any department, agency or instrumentality thereof.

(8) "Lender" means a person who extends or offers to extend credit to a retail buyer under an installment loan contract.

(9) A retail installment contract or installment loan contract is "made in this state" if: (A) An offer or agreement is made in Connecticut by a retail seller or a lender to sell or extend credit to a resident retail buyer, including, but not limited to, any verbal or written solicitation or communication to sell or extend credit originating outside the state of Connecticut but forwarded to and received in Connecticut by a resident retail buyer; or (B) an offer to buy or an application for extension of credit, or an acceptance of an offer to buy or to extend credit, is made in Connecticut by a resident retail buyer, regardless of the situs of the contract which may be specified therein, including, but not limited to, any verbal or written solicitation or communication to buy or to have credit extended, originating within the state of

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Connecticut but forwarded to and received by a retail seller or a lender outside the state of Connecticut. For purposes of this subdivision, a "resident retail buyer" means a retail buyer who is a resident of the state of Connecticut.

(10) "Motor vehicle" means any device in, upon or by which any person or property is or may be transported or drawn upon a highway by any power other than muscular. For purposes of this subdivision, "motor vehicle" does not include self-propelled wheelchairs and invalid tricycles, tractors, power shovels, road machinery, implements of husbandry and other agricultural machinery, or other machinery not designed primarily for highway transportation but which may incidentally transport persons or property on a highway, or devices which move upon or are guided by a track or travel through the air.

(11) "Retail buyer" means a person who buys or agrees to buy one or more articles of goods from a retail seller not for the purpose of resale or lease to others in the course of business and who executes a retail installment contract or an installment loan contract in connection therewith.

(12) "Retail installment contract" means any security agreement, as defined in subdivision (73) of subsection (a) of section 42a-9-102, made in this state, including one in the form of a mortgage, conditional sale contract or other instrument evidencing an agreement to pay the retail purchase price of goods, or any part thereof, in installments over a period of time and pursuant to which a security interest, as defined in subdivision [(37)] (35) of subsection (b) of section 42a-1-201, as amended by this act, is retained or taken by the retail seller for the payment of the amount of such retail installment contract. For purposes of this subdivision, "retail installment contract" does not include a rent-to-own agreement, as defined in section 42-240, as amended by this act.

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(13) "Retail installment sale" means any sale evidenced by a retail installment contract or installment loan contract wherein a retail buyer buys goods from a retail seller at a time sale price payable in two or more installments. The cash price of the goods, the amount, if any, included for other itemized charges which are included in the amount of the credit extended but which are not part of the finance charge under sections 36a-675 to 36a-685, inclusive, and the finance charge shall together constitute the time sale price. For purposes of this subdivision, "retail installment sale" does not include a rent-to-own agreement, as defined in section 42-240, as amended by this act.

(14) "Retail seller" means a person who sells or agrees to sell one or more articles of goods under a retail installment contract to a retail buyer.

(15) "Sales finance company" means any person engaging in this state in the business, in whole or in part, of acquiring retail installment contracts from retail sellers or installment loan contracts from holders thereof, by purchase, discount or pledge, or by loan or advance to the holder of either on the security thereof, or otherwise.

Sec. 50. Subsection (d) of section 42-221 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(d) The consumer may waive a warranty required pursuant to this section only as to a particular defect in the vehicle which the dealer has disclosed to the consumer as being defective. No such waiver shall be effective unless such waiver: (1) Is in writing; (2) is conspicuous, as defined in subdivision (10) of subsection (b) of section 42a-1-201, as amended by this act, and is in plain language; (3) identifies the particular disclosed defect in the vehicle for which such warranty is to be waived; (4) states what warranty, if any, shall apply to such disclosed defect; and (5) is signed by both the customer and the dealer

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prior to sale.

Sec. 51. Subdivision (4) of section 42-240 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(4) "Rent-to-own agreement" means an agreement for the use of personal property by an individual primarily for personal, family or household purposes, for an initial period of four months or less, whether or not there is any obligation beyond the initial period, that is automatically renewable with each payment and that permits the consumer to become the owner of the property. Any rent-to-own agreement which complies with sections 42-240 to 42-253, inclusive, shall not be construed to be, nor be governed by the laws of this state regulating, any of the following:

(A) A "retail installment contract" as defined in section 36a-770, as amended by this act;

(B) A "security interest" as that term is defined in [section 42a-1-201(37)] subdivision (35) of subsection (b) of section 42a-1-201, as amended by this act.

Sec. 52. Section 42-252 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

A lessor shall have the same obligations as a seller under [sections 42a-1-203, 42a-2-302, subsection (b) of section 42a-2-103 and sections] section 16 of this act and sections 42a-2-302 and 42a-2-312 to 42a-2-318, inclusive, and the same obligations as a creditor under sections 36a-645 to 36a-647, inclusive. Any rent-to-own agreement shall be subject to the provisions of section 52-572g.

Sec. 53. Subsection (b) of section 42-391 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective*

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October 1, 2005):

(b) The following terms used in sections 42-270 to 42-271a, inclusive, and 42-390 to 42-434, inclusive, have the meanings ascribed in the Uniform Commercial Code:

"Accession". Section 42a-9-102(a).

"Agreement". Section [42a-1-201(3)] 42a-1-201(b), as amended by this act.

"Contract". Section [42a-1-201(11)] 42a-1-201(b), as amended by this act.

"Investment property". Section 42a-9-102(a).

"Money". Section [42a-1-201(24)] 42a-1-201(b), as amended by this act.

"Person". Section [42a-1-201(30)] 42a-1-201(b), as amended by this act.

"Person related to". Section 42a-9-102(a).

"Security interest". Section [42a-1-201(37)] 42a-1-201(b), as amended by this act.

"Send". Section [42a-1-201(38)] 42a-1-201(b), as amended by this act.

Sec. 54. Subsection (c) of section 47a-21 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(c) Any security deposit paid by a tenant shall remain the property of such tenant in which the landlord and his successor shall have a security interest, as defined in [subsection (37)] subdivision (35) of subsection (b) of section 42a-1-201, as amended by this act, to secure such tenant's obligations. A security deposit shall be exempt from attachment and execution by the creditors of the landlord or his successor and shall not be considered part of the estate of the landlord

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or his successor in any legal proceeding. Any voluntary or involuntary transfer of a landlord's interest in residential real estate to a successor shall constitute an assignment to such successor of such landlord's security interest in all security deposits paid by tenants of such transferred residential real estate.

Sec. 55. Subdivision (5) of section 53-129a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(5) "Security interest" has the same meaning as specified in subdivision [(37)] (35) of subsection (b) of section 42a-1-201, as amended by this act.

Sec. 56. Sections 42a-1-107, 42a-1-207, 42a-1-208, 42a-2-208 and 42a-2A-301 of the general statutes are repealed. (*Effective October 1, 2005*)

Approved June 7, 2005